

REMARKS

Claims 1, 12, 14, 15, 17, 18, 20, 21, 23 and 24 are pending. No amendments have been made by way of the present submission, thus, no new matter has been added.

Rejections Under 35 U.S.C. §§ 102(b) and/or 103(a)

Claims 1, 3-7, 12, 14, 15, 17, 18, 20, 21, 23 and 24 remain rejected under 35 U.S.C. § 102(b) as anticipated by, or in the alternative, under 35 U.S.C. § 103(a) as obvious over Hansen, WO 98/54961. (See, Office Action of January 25, 2008, at pages 2-6, hereinafter, "Office Action"). Claims 3-7 have been cancelled herein, thereby obviating the rejection of claims 3-7. Applicants traverse the rejection as to the remaining claims.

In addition to the comments and amendments provided in Applicants' prior response of July 24, 2008, Applicants submit herewith a Declaration under 37 C.F.R. § 1.132 by Mr. Yukoh Hiei. That is, Applicants believe the Examiner's basis of support for any possible anticipation rejection of the claims was adequately addressed in the prior Reply. Concerning the possibility of support for an obviousness rejection, Applicants provide the following additional comments.

Graham v. John Deere, 383 U.S. 1, 17, 148 U.S.P.Q. 459, 467 (1966) has provided the controlling framework for an obviousness analysis. A proper analysis under 35 U.S.C. § 103(a) requires consideration of the four *Graham* factors of: (1) determining the scope and content of the prior art; (2) ascertaining the differences between the prior art and the claims that are at issue; (3) resolving the level of ordinary skill in the pertinent art; and (4) evaluating any evidence of secondary considerations (e.g., commercial success; unexpected results). (See, *Graham v. John Deere*, 383 U.S. at 17, 148 U.S.P.Q. at 467).

Therefore, in performing a proper obviousness analysis, the Examiner must consider any objective evidence of unexpected results submitted by Applicants. The presently submitted Declaration discloses that centrifugation of rice immature embryos unexpectedly provided increased GUS expression as compared to controls. (*See*, HIEI Declaration, at bottom of page 3, Experiment 1, and Figures 1 and 2). The HIEI Declaration further shows that there was observed a considerable enhancement of GUS expression in immature embryos which were subjected to heat pre-treatment as compared to controls. (*See, Id.* at page 7, and Figure 3).

Therefore, in light of the claim amendments and comments previously submitted, as well as the objective evidence of unexpected results submitted herein, Applicants believe that a proper obviousness analysis would result in a finding of non-obviousness.

Thus, reconsideration and withdrawal of the anticipation rejection and/or obviousness rejection of claims 1, 12, 14, 15, 17, 18, 20, 21, 23 and 24 are respectfully requested.

CONCLUSION

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Thomas J. Siepman, Ph.D., Reg. No. 57,374, at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.17; particularly, extension of time fees.

Dated: October 24, 2008

Respectfully submitted,

By 

Gerald M. Murphy, Jr.

Registration No.: 28,977

BIRCH, STEWART, KOLASCH & BIRCH, LLP

8110 Gatehouse Road

Suite 100 East

P.O. Box 747

Falls Church, Virginia 22040-0747

(703) 205-8000

Attorney for Applicants

Attachments: Declaration of Yukoh Hiei dated October 6, 2008